$~52

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(COMM) 827/2025 & I.A. 19600-19604/2025

ABBOTT PRODUCTS OPERATIONS AG & ANR. .....Plaintiffs

Through: Mr. Anirudh Bakhru, Mr. Naqeeb Nawab, Ms. Apurva Bhutani and Ms. Sejal Tayal, Advocates

versus

MAXFORD HEALTHCARE & ORS. .....Defendants

Through: None

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% **12.08.2025**

I.A. 19604/2025 (Application for exemption from filing legible/clear copies)

1. The present application has been filed by the Plaintiffs seeking exemption from filing legible/clear copies of the documents, which have been filed with the suit.

2. Subject to the Plaintiffs filing legible/clear copies of the documents within four (4) weeks from today, exemption is granted for the present.

3. Accordingly, the captioned I.A stands disposed of.

I.A. 19603/2025 (Application under Section 12A of the Commercial Courts Act seeking exemption for instituting prelitigation mediation)

4. The present application has been filed by the Plaintiffs seeking exemption from instituting pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015 (‘Act of 2015’) read with Section 151 of the

Code of Civil Procedure, 1908 ('CPC').

5. Having regard to the facts of the present suit that it contemplates urgent interim relief and in light of the judgment of Supreme Court in **Yamini Manohar v. T.K.D. Kreethi**[1], exemption from the requirement of pre-institution mediation is granted to the Plaintiffs.

6. Accordingly, the application stands disposed of.

I.A. 19601/2025 (Application filed under Order XI Rule 1(4) CPC seeking leave to file additional documents)

7. This is an application seeking leave to file additional documents under Order XI Rule 1(4) [as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ('Commercial Courts Act')] read with Section 151 CPC, within thirty (30) days.

8. The Plaintiffs, if wishes to file additional documents will file the same within thirty (30) days from today, and it shall do so strictly as per the provisions of the Commercial Courts Act and the Delhi High Court (Original Side) Rules, 2018 ('DHC Rules').

9. For the reasons stated in the application, the same is allowed.

10. Accordingly, the application is disposed of.

CS(COMM) 827/2025

11. Let the plaint be registered as a suit.

12. Summons be issued to the Defendants by all permissible modes on filing of process fee. Affidavit of service(s) be filed within three (3) weeks.

13. The summons shall indicate that the written statement(s) must be filed within thirty (30) days from the date of receipt of the summons. The

Defendants shall also file affidavits of admission/denial of the documents filed by the Plaintiffs, failing which the written statement(s) shall not be taken on record.

14. The Plaintiffs are at liberty to file replication(s) thereto within thirty (30) days after filing of the written statements. The replication(s) shall be accompanied by affidavits of admission/denial in respect of the documents filed by the Defendants, failing which the replication(s) shall not be taken on record.

15. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.

16. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

17. List before the learned Joint Registrar (J) for completion of service and pleadings on **25.09.2025.**

18. List before the Court on **28.01.2026.**

I.A. 19600/2025 (Application under Order XXXIX Rule 1 and 2 CPC)

19. The present application has been filed by the Plaintiffs under Order XXXIX Rules 1 and 2 CPC, seeking *ex-parte* ad-interim injunction against the Defendants.

20. The underlying suit has been filed by the Plaintiffs seeking relief of declaration, permanent injunction restraining the Defendants from infringing the trademark of the Plaintiffs along with passing off and other ancillary reliefs.

21. Mr. Anirudh Bakhru, learned counsel for the Plaintiffs states that the Plaintiff No.1 is a company established under the laws of Switzerland, and

---

[1] (2024) 5 SCC 15.

Plaintiff No.2 is a wholly owned subsidiary of Plaintiff No.1.

21.1 He states that Plaintiffs are amongst the founders of scientific practice of pharmacy and is one of the leading world-wide health care companies devoted to the discovery, development, manufacture and sale of healthcare products since the year 1888 and has a global presence in more than 160 countries including India.

21.2 He states that apart from strong physical presence in the market, the Plaintiffs also have significant presence over e-commerce market through their registered domain name i.e., https://www.abbott.com/ and https://www.abbott.co.in/.

21.3 He states that prefix ‘DUPHAR’ is derived from the corporate name of the Plaintiffs’ predecessor-in-title company i.e., N.V. Philips-Roxane Pharmaceutisch-Chemische Industrie ‘DUPHAR’, and the ‘DUPHAR’ part itself is an acronym for Dutch Pharmaceuticals, a research-oriented company which was established in 1948 and traces its origins as far back as 1920/1930s.

21.4 He states that the Plaintiffs have been constantly expanding their products bearing the ‘DUPHA’ mark and have adopted various trade marks having ‘DUPHA’ as an integral part, including but not limited to ‘DUPHALAC’, ‘DUPHALAC FIBER’, ‘Duphalac BEARS’, ‘Duphalac CHEWS’, ‘DUPHAR’, ‘DUPHASTON’, ‘DUPHABEARS’, ‘DUPHAPRO’, etc. He states that ‘DUPHA’ is the dominant element in the mark.

21.5 He states that Plaintiffs have obtained trademark registrations for their formative marks, which includes ‘DUPHA’ in India and the details are reproduced as under:

S.No.	Trade Mark	Registration No.	Filing Date	Class
1.	DUPHASTON	198281	05.10.1960	05
2.	DUPHALAC	515614	24.08.1989	05
3.	DUPHALAC FIBER	2687844	26.02.2014	05
4.	DUPHAPRO	3689204	28.11.2017	05
5.	DUPHABEARS	IRDI – 3777878 IR - 1189044	20.02.2018	05, 29, 30
6.	Duphalac BEARS	4348989	15.11.2019	05
7.	Duphalac CHEWS	4348988	15.11.2019	05
8.	DUPHAR	148107	22.03.1951	05

21.6 He states that the Plaintiffs use 'DUPHALAC', for its medical product containing lactulose, formulated inter alia to prevent and treat gastrointestinal as well as liver diseases and disorders. He states that Plaintiffs have been using their mark 'DUPHALAC' since 1964 in abroad and in India since 1989. He states that the annual sale of 'DUPHALAC' India in the year 2023 was of Rs. 274 Crores. The pictorial depictions of the Plaintiffs product (lactulose solution) is reproduced below:

21.7 He states that in and around August, 2024, the Plaintiffs came across a pending trade mark application bearing no. 6013992 for the impugned mark 'DUPAMAC' in Class 5 in respect of 'Medicinal and Pharmaceutical Preparations' included in Class 5 filed on 10.07.2023 with a user claim of 09.02.2016, by the Defendant No.1. He states that the said application has been accepted by the Trade Marks Registry and has been published in the Trade Marks Journal No. 2204-0 dated 14.04.2025.

He states that the Plaintiff No.1 has recently opposed the said application of the Defendant No.1 and has filed its notice of opposition on 29.07.2025.

21.8 He states that Defendant's impugned mark 'DUPAMAC' is deceptively similar and has been used by the Defendants for an identical product i.e., lactulose solution.

21.9 He states that the Plaintiffs issued notice dated 07.08.2024 requisitioning the Defendant No.1 to cease and desist from using the impugned mark. He states that the Defendant No.1 through counsel sent a reply dated 20.08.2024 *vide* email dated 21.08.2024, whereby the Defendant No.1 took a stand that the word 'DUPA' resembles to the 'nature of the product', while the word 'MAC' stems from first three letters of Defendant No.1's trading name and therefore, the impugned mark of the Defendants is not violative of the Plaintiffs trademark.

21.10 He states that this explanation of the Defendants in the reply dated 20.08.2024 is fallacious. He states that the product in question is lactulose solution and 'DUPA' does not resemble the nature of the product. So also, the word 'MAC' are not the first three letters of the trading name of the Defendants and instead it would be 'MAX'.

21.11 He states that during a routine check in June, 2025 the Plaintiffs came across various websites on which the infringing product of the Defendants with the impugned mark were listed. He states that the Plaintiffs' representative purchased the infringing product of the Defendants from the website i.e., www.truemeds.in on 06.06.2025 and it was mentioned over the infringing product that Defendant No.1 is the marketer; Defendant No.2 and Defendant No.1 are stated to be in a 'Strategic alliance' and Defendant No.3 was mentioned as manufacturer of the said product. The image of the infringing product is reproduced below:

21.12 He states that thereafter, the Plaintiffs in order to give an opportunity to the Defendants to resolve the dispute amicably issued letter dated 13.06.2025, which was replied to by the Defendants vide letter dated 08.07.2025, wherein the Defendants have refuted all the claims of the Plaintiffs.

21.13 A comparison between the trademark of the Plaintiffs and that of the

Defendants is set out in the plaint at paragraph ‘90’, which is given below:

21.14 He has also handed over a Note dated 12.08.2025 along with documents, with respect to trademark search on the registry’s website for the marks starting with DUPA in Class 5. He states on the basis of said Note and documents that no other party is using the prefix DUPA for lactulose solution. He states that an affidavit with respect to the contents of the Note along with documents will be filed within three (3) days.

21.15 He states that Plaintiffs have filed several enforcement actions against protection and dilution of its mark ‘DUPHA’ and he refers to the details of the said proceedings enlisted at paragraph ‘65’ of plaint.

22. This Court has heard the learned counsel for the Plaintiffs and perused the record.

23. The Plaintiffs have stated that an advance copy of the plaint paper

book has been served on the Defendants as well as its attorney who issued the replies to the legal notice. However, none appears on behalf of the Defendants.

24. The subject matter of the present suit is Plaintiffs' mark 'DUPHALAC' used for its lactulose solution product. The Defendants' mark is 'DUPAMAC', also used for the latter's lactulose solution product.

25. The Plaintiffs adopted the mark 'DUPHALAC' for this product in 1964 worldwide and in India 1989. The Plaintiffs have reasonably explained the basis of its adoption of 'DUPHA' in 1948, as the acronym of its predecessor. Since the product in question is lactulose, the mark 'DUPHALAC' is a combination of DUPHA+LAC. The extensive use of the said mark 'DUPHA' by the Plaintiff for its other products is also evident from the record. In these facts, the Court is of the *prima facie* opinion that 'DUPHALAC' is a coined mark.

26. The Defendant No.1 has taken a defense in its replies to the cease-and-desist notices issued by the Plaintiffs that the word 'DUPA' resembles to the 'nature of the product' ('which in this case would be lactulose syrup'). In this regard, the Plaintiffs has placed on record a Note dated 12.08.2025 during the course of hearing. A perusal of the said Note shows that the Plaintiffs did a trademark search for the mark 'DUPA' in Class 5, which revealed that no other party is using the prefix 'DUPA' for lactulose product. It is stated in this Note that a google search with respect to lactulose product being sold with pre-fix 'DUPA' also gave no positive results and instead the said google search suggested Plaintiffs' product 'DUPHALAC'. It is matter of record that there is no active ingredient in the lactulose solution which would justify the use of the words 'DUPA'. Therefore, in the

considered opinion of this Court the contention of the Defendants that 'DUPA' resembles nature of product (lactulose solution) is *prima facie* not borne out from the material available in the public domain.

27. The products in question (i.e., lactulose solution) are identical and sold over the counter in the pharmacy shop. As per the application of the Defendants filed before the trademark registry, it commenced user in the year 2016. The sales of the Plaintiff for its product 'DUPHALAC' is stated to be Rs. 128 crores in the year 2016 for India. The Plaintiffs and Defendants are in the same business line and it inexplicable that the Defendants would have not been aware of the Plaintiffs registered trademark 'DUPHALAC' for lactulose solution. Therefore, adoption of a deceptively similar mark 'DUPAMAC' for identical product by the Defendants exudes the intention of the Defendants to ride on the goodwill of the Plaintiffs.

28. The prefix 'DUPA' in 'DUPA<u>M</u>AC' closely resembles to the prefix 'DUPHA' in 'DUP<u>H</u>A<u>L</u>AC', which has a potential of creating confusion due to similarity of sound w.r.t. pre-fix starting with 'du' sound and suffix ending with 'ac' sound, both the competing marks. Moreover, the dropping of the alphabet 'H' and insertion of alphabet 'M' in place of 'L' in the Defendant's impugned mark does not make the two marks dissimilar.

29. In light of the fact that the products of Defendants are pharmaceutical products, the prayer of the Plaintiffs for *ad interim* injunction at an ex-parte stage is to be considered in view of the law settled by this Court has in **Mankind Pharma Ltd. v. Cadila Pharmaceuticals Ltd.**[2] and in **Mankind Pharma Ltd. v. Sebakind Pvt. Ltd.**[3].

---

[2] CS(OS) 2047/2014 dated 22.01.2015.
[3] 2024 SCC OnLine Del 8982

30. Considering the two marks as a whole, this Court is of the considered opinion that Plaintiffs have made out a *prima facie* case in their favour, and in case no *ex-parte* ad-interim injunction is granted, Plaintiff will suffer an irreparable loss; balance of convenience also lies in favour of the Plaintiffs and against the Defendants.

31. Accordingly, till the next date of hearing, the Defendants, their directors, partners, principals, employees, agents, distributors, franchisees, representatives, assigns and all those connected with it in its business are restrained from using directly or indirectly, selling, manufacturing, applying for registration, offering for sale, exporting, advertising, or marketing, in any manner whatsoever the impugned mark ‘DUPAMAC’ and ‘Dupamac’ and/or and/ or any other mark, device, logo or trade name which is identical and/or deceptively or phonetically similar to the Plaintiffs’ ‘DUPHA’ Marks including but not limited to ‘DUPHASTON’, ‘DUPHALAC’, ‘DUPHABEARS’, ‘DUPHALAC FIBER’, ‘DUPHAPRO’, ‘DUPHAR’, ‘Duphalac BEARS’, ‘Duphalac CHEWS’’ in any manner whatsoever.

32. Issue Notice through all permissible modes, including e-mail.

33. Reply be filed within four (4) weeks. Rejoinder if any be filed within two (2) weeks thereafter.

34. In view of the fact that the Plaintiffs have sought appointment of a Local Commissioner to seize the infringing goods, the very purpose of grant of ad interim injunction would be defeated if the Defendants are given notices contemplated in Order XXXIX Rule 3 of Code of Civil Procedure,

1908 prior to the execution of the commission. Hence, it is directed that the Plaintiffs shall serve notices under Order XXXIX Rule 3 of CPC at the time of execution of the commission, which shall not be later than two (2) weeks from today.

35. The prescribed affidavit in terms of Order XXXIX Rule 3 of the CPC shall be filed within one (1) week of the execution of the commission.

36. List before the learned Joint Registrar (J) for completion of service and pleadings on **25.09.2025.**

37. List before the Court on **28.01.2026.**

I.A. 19602/2025 (Application for appointment of Local Commissioner)

38. The present application has been filed by the Plaintiffs under Order XXVI Rule 9 and Order XXXIX Rule 7 of the CPC seeking appointment of Local Commissioner for executing the commission at the address of Defendant No. 1. It is noted that there is no relief qua Defendant No. 2 and 3's premises in the application.

39. The Court has granted an ad interim *ex-parte* injunction as recorded above in I.A. 19600/2025 under Order XXXIX Rules 1 and 2 CPC.

40. In order to ensure that the injunction is fully complied with and to preserve the evidence of infringement, this Court deems it appropriate to appoint Local Commissioner to visit premises of the Defendant No.1, i.e., **Gala No. S 108/109, Jai Mata Di Compound, Kalher Village, Bhivandi, Thane, Pin- 421302, Maharashtra, India.**

41. Ms. Sudeshna Singh, Advocate [Mob. No. 6901608128, Enrl. No. D/4704/2022], is appointed as a Local Commissioner, with a direction to visit the above-mentioned premise of the Defendant No.1.

42. The mandate of the Local Commissioner is as under:

(i) The Local Commissioner, along with a representative of the Plaintiffs and their counsel, shall be permitted to enter upon the premises of the Defendant No.1 mentioned above or any other location/premises that may be identified during the course of the commission, in order to conduct the search and seizure.

(ii) The Local Commissioner shall conduct a search at the Defendant No.1's premises and seize the infringing products, including any packaging/promotional material reflecting infringement.

(iii) The Local Commissioner shall make an inventory of all the infringing products including but not limited to label/packaging material.

(iv) After seizing infringing material, the same shall be sealed and signed by the Local Commissioner, in the presence of the parties, and released on *superdari* to the said Defendant on their undertaking to produce the same as and when further directions are issued in this regard.

(v) The Local Commissioner shall also be permitted to make copies of the books of accounts, including ledgers, cash registers, stock registers, invoices, books, etc., insofar as they pertain to the infringing products.

(vi) The Defendant No. 1 and its representatives are directed to provide full assistance to the Local Commissioner for executing the present commission.

(vii) In case, the aforesaid premises of the Defendant No. 1 or any part thereof are found locked, the Local Commissioner is permitted to break open the locks and doors for the execution of the commission.

(viii) To ensure an unhindered and effective resolution of this order, the SHO of the local police station having jurisdiction of the aforesaid premises and the DCP concerned are directed to render the necessary protection and assistance to the local commissioner, if and when sought.

(ix) The Local Commissioner shall have the liberty to take photographs and/or videos of the stock seized and to take a sample of the infringing products to be filed along with the Report.

43. The Local Commissioner shall file its Reports within two (2) weeks of executing the commission, along with photographs taken and photocopies of the books of account and stock and the inventory procured pursuant thereto.

44. The fee of the Local Commissioner, to be borne by the Plaintiffs, is fixed at Rs.2,00,000/-. The Plaintiffs shall also bear expenses for travel and lodging of the Local Commissioner and other miscellaneous out-of-pocket expenses for the execution of the commission.

45. The application stands disposed of in the above terms.

46. The order passed today, shall not be uploaded for a period of three (3) weeks for enabling the execution of the commissions.

47. *Dasti* under the Signature of the Court Master.

MANMEET PRITAM SINGH ARORA, J

AUGUST 12, 2025/rhc/SK